

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



76-4144

B

PDG

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

LILIAN ILUSTRISIMO,  
Petitioner

v.

IMMIGRATION AND NATURALIZATION SERVICE  
Respondent

\*  
\*  
\*  
\* Civil Action No. 76-4144  
\*  
\*

JOINT APPENDIX



**PAGINATION AS IN ORIGINAL COPY**

TABLE OF CONTENTS

|  |      |
|--|------|
| Order to Show Cause and Notice of Hearing      | A-1  |
| Relevant Excerpts from Transcript of Testimony | A-2  |
| Decision of Immigration Judge                  | A-7  |
| Decision of Board of Immigration Appeals       | A-16 |

UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

**ORDER TO SHOW CAUSE and NOTICE OF HEARING**

**In Deportation Proceedings under Section 242 of the Immigration and Nationality Act**

UNITED STATES OF AMERICA:

In the Matter of )  
LILIAN ILLISTRISMO )  
Respondent. )

To: Miss Lilian Illustrisimo (name) File No. A19 373 596

246 Laurel Street, Hartford, Connecticut

**Address (number, street, city, state, and ZIP code)**

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of the Philippines  
and a citizen of the Philippines;
3. You entered the United States at San Francisco, California on  
or about March 9, 1970;  
(date)
4. At that time you were admitted as a visitor for pleasure and were  
authorized to remain in the United States in that status until September 8, 1970;
5. You were thereafter granted a period in which to depart from the United  
States voluntarily on or before October 8, 1970;
6. You have remained in the United States beyond October 8, 1970, without  
authority of the United States Immigration and Naturalization Service;

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241 (a) (2) of the Immigration and Nationality Act in that, after admission as a nonimmigrant under Section 101 (a) (15) of said act you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at Room 357, Post Office Building, 135 High Street, Hartford, Connecticut on Tuesday, May 21, 1974 at 1:00 P.M., and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: May 6, 1974

IMMIGRATION AND NATURALIZATION SERVICE

Form I-221  
(Rev. 3-30-67)

signature and title of issuing officer

## STRICT DIRECTOR

HARTFORD, CONNECTICUT

(City and State)

A-1

(over)

1 Q Could you tell me specifically why you would be persecuted?

2 A Well, I have been a member once of a group of students in the Philippines  
3 who disagreed with the ruling of Marcos.

4 COUNSEL TO IMMIGRATION JUDGE:

5 At this time I would like to make an application for relief under 243(h).

6 IMMIGRATION JUDGE TO COUNSEL:

7 Alright. Before we come to that. . .

8 IMMIGRATION JUDGE TO RESPONDENT:

9 Q Now you may not select Canada as the country of deportation unless you  
10 previously resided there. Have you ever lived in Canada?

11 A No.

12 Q Alright, you understand that under voluntary departure you may go to any  
13 country that will accept you. In otherwords, if Canada will allow you  
14 to go, you can go there, but with an order of deportation I cannot order  
15 Canada. Do you have any other choice of a country to which you would  
16 prefer to go? It is not necessary to make a choice, but if you have a  
17 choice, you may state it.

18 A Other than Canada?

19 Q Canada, Mexico or the islands around the United States.

20 A I would say Mexico then.

21 Q Well, you see, that is also barred. Canada, Mexico and the islands  
22 around the United States may not be selected. As I say, you do not  
23 have to make a choice, but if you do have a choice, other than Canada,  
24 Mexico, or adjacent islands.

25 A I'll say Germany.

26 Q Alright, and then there would be an alternate order that if that country

1 COUNSEL TO IMMIGRATION JUDGE:

2 Yes, her testimony is what I would like to go on.

3 IMMIGRATION JUDGE TO RESPONDENT:

4 Alright, go ahead. Alright, Mr. Barry, go ahead.

5 COUNSEL TO RESPONDENT:

6 Q Mrs. Illustrisimo, you realize that this is a deportation proceeding?

7 A Yes.

8 Q And your application that you made is that you do not want to go back  
9 to the Philippines because you will be persecuted. Is that correct?

10 A Yes, sir.

11 Q Now have you ever been arrested or convicted of a crime either here in  
12 the United States or any place in the world?

13 A No.

14 Q Are you now or have you ever been a member of the Communist Party?

15 A No.

16 Q Now tell me Mrs. Illustrisimo, why can't you go back to the Philippines?

17 A Because I believe I will be persecuted by the Marcos government police.

18 Q In what sense? Have you ever been a member of any organization that was  
19 anti-government?

20 A Yes. I have been a member of the Kabataang Makabayan which is a  
21 patriotic youth organization.

22 Q Could you kindly spell that?

23 A Patriotic youth organization.

24 IMMIGRATION JUDGE TO RESPONDENT:

25 Q Patriotic youth organization. Alright now would you spell it?

26 A Cabataan Makabayaan.

1 COUNSEL TO RESPONDENT:

2 Q Is there any other organization that you belonged to?

3 A That is the only organization that I am an active member.

4 Q What about Ningas. . .

5 A Ningas Cogon? Yes, that is another organization.

6 Q Were you a member of that organization also?

7 A It is a part of our organization. It is a brother of the organization  
8 of what I am.

9 IMMIGRATION JUDGE TO RESPONDENT:

10 Q The father of Kabataang?

11 A Kabataang Makabayan; yes.

12 COUNSEL TO RESPONDENT:

13 Q Now, were you ever an officer in this organization that you talk about  
14 the Kabataang?

15 A Yes, I was a second secretary of that organization.

16 Q And as a second secretary what were your duties?

17 A My duties is to spread those leaflets with our ideas and the Marcos  
18 Administration.

19 Q Have you ever made any speeches or attended any rallies with the  
20 students?

21 A Yes, I attended rallies and I spoke many times.

22 Q Were you ever imprisoned or jailed because of this?

23 A No, I was not because when they became strict I get into hiding and  
24 that is why I wasn't able to be put into prison.

25 Q Why would you think your life would be endangered if you were to return  
26 to the Philippines? Why you particularly?

1 A Well because I presume that my name was already gotten by our National  
2 Bureau of Investigations which handles these cases which spoke against  
3 the Marcos Administration.

4 Q Well, do you have a family in the Philippines?

5 A I still have a family; all my family are still in the Philippines.

6 Q Are anyone of those being persecuted?

7 A No, because they are not a member of the organization of which I am in.

8 Q Is your mother alive?

9 A Yes, my mother, my four brothers, a sister.

10 Q Do any one of your. . .do you have. . .tell me this, how many brothers  
11 and sisters do you have?

12 A Actually, I have five brothers, but one died, and I have another sister.  
13 We are seven in all in the family.

14 Q And what does your father do?

15 A My father is working in the Manila Electric Company when he was still  
16 alive.

17 Q Then your father is deceased. Is that correct? And what does your  
18 mother do?

19 A My mother is just a housewife.

20 Q And what does the rest of the family do? Your brothers for example.

21 A My brother took the place of my father when he died. One of my eldest  
22 brothers.

23 Q Then he is working for the Manila Electric Company? Is that correct?

24 A Yes.

25 Q And name some of the rest of the members of your family.

26 A I have a teacher, a brother who is a teacher; and my sister who is a nun;

1 and one brother who is a student.

2 Q Now, none of these are that you know of are being persecuted for any  
3 reason. Are they?

4 A Not that I know of.

5 Q But you honestly believe; you honestly believe that you belong to this  
6 organization; that you would be persecuted because of your activity  
7 A Yes, because one of . . . a secretary was already persecuted when I was  
8 still there.

9 Q What is the name of the secretary. Do you recall?

10 A Her name is Corazon de Jesus.

11 Q How do you spell that please?

12 A The first name is CORAZON DE JESUS.

13 Q Now, if you were ordered deported, to what country would you wish to be  
14 deported?

15 A I wish to go to Spain.

16 COUNSEL TO IMMIGRATION JUDGE:

17 I have no further questions.

18 IMMIGRATION JUDGE TO RESPONDENT:

19 Q Alright, when you were here before you said Germany. You now wish to  
20 go to Spain?

21 A Yes. Because I can speak Spanish.

22 IMMIGRATION JUDGE TO COUNSEL:

23 That is all then Mr. Barry?

24 COUNSEL TO IMMIGRATION JUDGE:

25 Yes, that's all.

26 IMMIGRATION JUDGE TO TRIAL ATTORNEY:

UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

File: A19 373 596 - Hartford, Connecticut

7-1-375  
July 9, 1974

In the Matter of )  
 )  
 LILLIAN ILLISTRISIMO ) IN DEPORTATION PROCEEDINGS  
 )  
 Respondent )  
  
CHARGE: Immigration and Nationality Act,  
Section 241(a)(2) (8 USC 1251(a)(2))  
Nonimmigrant visitor - remained longer.  
  
APPLICATION: Voluntary departure - temporary  
withholding of deportation to the  
Philippines - Immigration and Nationality  
Act, Section 243(h) (8 USC 1253(h)).

IN BEHALF OF RESPONDENT:

Leo H. Barry, Esq.  
One Hunter Street  
Long Island City, New York 11101

IN BEHALF OF SERVICE:

Ralph J. Smith  
Trial Attorney

ORAL DECISION OF THE IMMIGRATION JUDGE

This record relates to a 38-year-old, female alien, a native and citizen of the Philippines. She was admitted into the United States as a non-immigrant visitor on or about March 9, 1970. The time of her admission as a nonimmigrant visitor was limited to six months, until September 8, 1970. She was thereafter granted a period within which to depart voluntarily from the United States on or before October 8, 1970. She has remained in the United States after October 8, 1970, without the authority of the United States Immigration and Naturalization Service.

The Respondent admitted that all of the factual allegations in the Order to Show Cause are true. She did not admit deportability as charged. The

record of her admission into the United States was introduced into evidence (Exh. 2). It shows that she was admitted at San Francisco, California, on March 9, 1970, as a nonimmigrant visitor for pleasure until September 8, 1970. The reverse of the form under "Record of Extensions" states "no extensions," but further "Satisfactory Departure at HAR October 8, 1970." The Respondent's admissions of the factual allegations in the Order to Show Cause as supported by the record of her admission (Exh. 2) are clear, unequivocal and convincing evidence that she is deportable as charged.

The Respondent applied for the privilege of voluntary departure from the United States without expense to the government in lieu of deportation. She has never been arrested, she has never been a member of a subversive organization, she has the funds to effect her departure without cost to the government, and she stated she is willing to depart within the time and under the conditions set for departure. She testified that her closest relative in the United States is a cousin.

The Respondent at first elected Germany as the country to which she prefers to go if it is ordered that she be deported. She was advised that her deportation would be directed in the first instance to Germany, if deportation is required, and in the alternative to the Republic of the Philippines. She stated that she wished to file an application for temporary withholding of deportation to the Philippines on the ground that she would be persecuted there because of her politics. She was granted time to file an application of temporary withholding of deportation, the application was duly filed and

the hearing continued to consider that application. At the continued hearing the Respondent changed the designation of the country to which she preferred to go, if she were to be deported, to Spain.

The Respondent applied for temporary withholding of deportation to the Philippines under the provisions of Section 243(h) of the Immigration and Nationality Act as amended. Her application is based on the fact that she was a member of the Kabataang Makabayan and another organization which was a part of that organization, Ningas Cogon. She stated it was a student organization and that the name means "patriotic youth organization." She stated that the organization held meetings and rallies in opposition to the Marcos Administration, and that one friend of hers who was an officer in that organization was put in prison and later executed. The Respondent stated that she was second secretary of the organization, that she attended student rallies, at some of which she spoke, and that she spread leaflets against the Marcos government. She testified that she fears that if she returns to the Philippines, her life will be endangered because anyone who has opposed the Marcos government would be endangered. She stated a distant relative of hers is in prison now because she opposed Marcos.

Attached to the Respondent's application is some published material relating to the Marcos government and its opponents. The first refers to "Principal leaders of the legitimately elected political opposition in the Philippines" and the fact that they are in prison. This is

excerpted from the New York Times of Wednesday, July 24, 1974. A second excerpt from the New York Times of October 31, 1972, is a story concerning the dictatorship of Marcos under the heading of "President Marcos Another Pacific Dictator." It is written by a former Peace Corp volunteer from his diary, and refers to graft and corruption under the Marcos government and the fact that Marcos could not succeed without the support of the United States government. It refers to military installations of the United States in the Philippines and American business and financial interests and the writer suggests that the President of the Philippines is assuring American investors of protection and accommodation. A third excerpt from the New York Times attached to the application refers to denunciation of Marcos by a former Senator from the Philippines and another excerpt relates to the grant of political asylum in the United States to the former Chairman of the Small Farmer's Administration under the Marcos Administration based on his published opposition to the regime which made it dangerous for him to return to the Philippines. Another excerpt is from Newsweek of October 9, 1970. It refers to the general situation in the Philippines under the heading "The Marcos Gamble."

A list entitled "Complete List of USA Filipinos in Alleged Marcos "Blacklist"" was submitted by the Respondent. Her name is not included on this long list which is dated July 15, 1973, and there is no indication as to what publication or source it might have come from. The Respondent stated that it was sent to her by friends in the Philippines. She said

her name was not on this list, but her friend told her her name was on some other list.

The Respondent came to the United States as a nonimmigrant visitor. She was issued a valid passport by the government of the Philippines. It is endorsed by the Bureau of Immigration in the Philippines for her departure from that country on March 7, 1970. It contains a nonimmigrant B-2 visa issued by a Consul of the United States at the Embassy in Manila. It is highly unlikely that the Respondent would be issued a valid passport and permitted by an Immigration Officer to pass freely out of the Philippines, if the government had any interest whatsoever in her or her whereabouts.

Upon arrival in the United States the Respondent was admitted as a non-immigrant visitor for pleasure. She states that she thought that she would be persecuted while she was still in the Philippines but that she did not apply for admission to the United States as a refugee because she did not think she had to do so at that time. She was asked why she waited four years to make the application and answered, "It is only right now that I have to think about it. I have been living here for many years, and I have decided to see a lawyer so that my papers will be right."

The Respondent was admitted for only six months in 1970 and the period of her admission was never extended. The record of her admission is noted "no extensions." In 1970 she was granted one month within which to depart voluntarily from the United States. Certainly if she had any fear of

persecution in the Philippines, she would have made it known at that time when she was directed to depart within one month. However, she did not do so. Clearly, the application which has been submitted and which contains no definite evidence whatsoever relating to her was an after thought arrived at after she was placed under deportation proceedings.

None of the material attached to the Respondent's application for temporary withholding of deportation relates to her in any way. It relates to former officials of the government and persons who held high positions in the Administration. The Respondent was a medical secretary at a hospital where she had attended school and thereafter she was a clerk in a starch factory.

All the members of the Respondent's family are still in the Philippines and no one of them has ever been persecuted or had difficulty with the Police. The Respondent stated that she was never arrested and that she never had difficulty with the Police while she was in the Philippines. She added that she feared that she might have difficulties and went into hiding.

The Respondent's father worked for the Manila Electric Company until the time of his death. Her eldest brother took over his job and now works for the Manila Electric Company. She has three other brothers, a teacher, a laborer, and a student. She has one sister who is a nun. Her mother is not employed, but is supported by two of her brothers, the one who works for the Electric Company in Manila and the teacher.

The Respondent has submitted no satisfactory evidence which would warrant a reasonable fear of her persecution in the Philippines if she returns

there. Her application for withholding of deportation to the Republic of the Philippines will be denied.

A statement made by the Respondent together with her application for withholding of deportation and the newspaper articles attached to it which were heretofore described, were forwarded to the Office of Refugee and Migration Affairs, Department of State in Washington, D. C. with a request for the opinion of the Director of that organization as to the Respondent's claim of persecution in the Philippines if she returns there. The Director of the Office of Refugee and Migration Affairs, Department of State, answered that he has no reason to doubt the Respondent's claims that she campaigned against President Marcos and that she was a member of the Kabataang Makabayan, but that "mere membership in the organization would not subject her to any reprisals."

The Director of the Office of Refugee and Migration Affairs, Department of State, notes that the Respondent's alleged political activity appeared to be related to the Presidential election of 1969, and that she entered the United States shortly thereafter in March, 1970. He further notes that the Respondent has not been politically active since she left the Philippines in 1970. He states that he is unable to conclude that the Philippine government "would have any political interest in her and that her fear of persecution in the Philippines is well founded." He continues "far more active opponents of Marcos during the 1969 elections are not arrested or harassed in any way."

The Director of the Office of Refugee and Migration Affairs concludes that he is unable to state that the Respondent should be exempted from regular

Immigration procedures on the grounds that she would be persecuted in the Philippines. Counsel objected to granting full weight to this document on the ground that it is politically expedient for the Department of State not to be critical of the government of the Philippines and because letters such as Exhibit 4 in this case appear to be written as a matter of course. However, the letter is merely confirmatory of the decision reached otherwise on the record of the hearing. It is considered at its face value for that purpose. I cannot accept Counsel's assessment of the value of the document. I have seen such letters in which a contrary result was reached, and in fact the Respondent submitted in evidence newspaper clippings which show that some persons from the Philippines who were officials of the government or otherwise important politically have been granted asylum in the United States.

For the purpose of this decision the allegations of fact contained in the Order to Show Cause are adopted as findings of fact, and the charge as to deportability contained in the Order to Show Cause is adopted as a conclusion of law.

ORDER: IT IS ORDERED that, in lieu of an order of deportation, the Respondent will be granted voluntary departure without expense to the government on or before April 24, 1975, or any extension beyond that date as is granted by the District Director and under such conditions as he shall direct.

IT IS FURTHER ORDERED that, if the Respondent fails to depart voluntarily when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings, and the following order shall become immediately effective: the Respondent shall be deported from the United States to Spain on the charges contained in the Order to Show Cause.

IT IS FURTHER ORDERED that, if the aforesigned country declines to accept the Respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept the Respondent into its territory the Respondent shall be deported to the Republic of the Philippines.

IT IS FURTHER ORDERED that, the application of the Respondent for temporary withholding of deportation to the Philippines under Section 243(h) of the Immigration and Nationality Act, as amended, be denied.

*E. C. C.*  
EUGENE C. CASSIDY  
IMMIGRATION JUDGE



United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

MAR 5 - 1976

File: A19 373 596 - Hartford

In re: LILLIAN ILLISTRISIMO

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Leo H. Barry, Esquire  
One Hunter Street  
Long Island City, N.Y. 11101

ON BEHALF OF I&N SERVICE: George Indelicato  
Appellate Trial Attorney

ORAL ARGUMENT: February 24, 1976

CHARGE:

Order: Section 241(a)(2), I&N Act (8 U.S.C 1251  
(a)(2)) - Nonimmigrant visitor - remained  
longer

APPLICATION: Voluntary departure - Withholding of deportation  
under section 243(h) of the I&N Act

ORDER:

PER CURIAM: The decision of the immigration judge  
is affirmed. The appeal accordingly is dismissed.

FURTHER ORDER: The respondent is permitted to depart  
from the United States voluntarily within 30 days from the  
date of this order or any extension beyond that time as  
may be granted by the District Director; in the event the  
respondent fails so to depart, the respondent shall be  
deported as provided in the immigration judge's order.

Chairman

A-16

COPY RECEIVED  
Robert B. Fink Jr.  
UNITED STATES ATTORNEY  
8/12/76  
Maurice F. Bryant